

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****215****RSA-319-2014 (O&M)****Date of decision: 21.04.2025****Balwan and another****...Appellant(s)****Vs.****Attar Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Mohit, Advocate for
Mr. D.D. Bansal, Advocate for the appellants.

NIDHI GUPTA, J.

The defendants No.1 and 2 are in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the plaintiff/respondent No.1 herein, seeking declaration to the effect that he and proforma defendants No. 3 and 4/respondents No.2 and 3 herein, are owners in equal shares of the suit property as mentioned in the plaint by virtue of being born to Nanti @ Chhotan, has been decreed by learned trial Court vide judgment and decree dated 04.02.2012; which has been further upheld by learned lower appellate Court vide judgment and decree dated 01.11.2013.

2. Brief facts of the case as pleaded in the plaint are that the plaintiff and proforma defendants No.3 and 4 were the owners in equal shares of suit property by virtue of being born to Nanti alias Chhotan. Nanti alias Chhotan was married to one Lachhi Ram son of Sheo Karan. Lachhi Ram had died issueless. After the death of Lachhi Ram, Nanti



performed Karewa marriage with his brother Dungar Ram son of Sheo Karan. Out of this Karewa marriage, plaintiff and proforma defendants No. 3 and 4 were born. Later Dungar Ram had performed second marriage with one Darkan out of which wedlock, appellants/defendants No. 1 and 2 were born. Vide mutation No. 441 dated 18.5.1985, the suit land had been transferred in the name of all parties to the suit; whereas it should have been transferred in the name of children of Nanti and Dungar i.e. the plaintiff and proforma defendants No. 3 and 4. Vide the impugned judgment and decree dated 04.02.2012, suit of the plaintiff was decreed with costs by the learned trial Court. The appeal filed by defendants No.1 and 2 was dismissed with costs by the learned lower appellate Court vide judgment and decree dated 01.11.2013. Hence, the present second appeal has been filed by defendants No.1 and 2.

3. It is submitted by learned counsel for the appellants that the suit of the plaintiff was time barred as the mutation was sanctioned on 18.05.1985; whereas the Civil Suit was filed on 14.10.2003. It is contended that as per Section 58 of the Limitation Act, limitation for challenging the mutation is 3 years. As such, suit of the plaintiff was barred by limitation. However, this fact has not been correctly considered in the right perspective by the learned Courts below. It is argued by learned counsel for the appellants that the suit of the plaintiff was not merely for inheritance but challenge was also laid to the mutation. Moreover, the plaintiff has admitted in his cross-examination that defendants No. 1 and 2 are in possession of the suit property. It is



accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside and the suit of the plaintiff be dismissed with costs in the interest of justice.

4. No other argument is raised on behalf of the appellants/defendants No. 1 and 2.

5. I have heard learned counsel for the appellants/defendants No. 1 and 2 and perused the case file in great detail.

6. I find no merit in the submissions made on behalf of the plaintiff. It was the pleaded case of the appellants before the Courts below that the suit property was ancestral in nature belonging to Sheo Karan. However, it is admitted by DW1/defendant No.1 in his cross-examination that Lacchi Ram had died issueless whose property came to Nanti after his death because she was his widow. Thus, suit property had devolved upon Nanti from Lachhi Ram, and it had become her absolute property. Admittedly, plaintiff and proforma defendants no. 3 and 4 are the natural born children of Nanti; whereas the appellants are the children of Dangar Ram and his second wife Darkan. The appellants are not the real brothers of the plaintiff and proforma defendants No. 3 and 4, rather they are the stepbrothers. Hence, as per Hindu Succession Act, only plaintiff and proforma defendants No. 3 and 4 were entitled to inherit the property of Nanti on her death irrespective of the fact that she had performed Karewa marriage with Dungar Ram. According to Section 15 of the Hindu Marriage Act, 1956, the property of a female Hindu dying intestate shall devolve according to the Rules set out in Section 16 (a) (i) upon the sons and



daughters. As such, only the plaintiff and proforma defendants No. 3 and 4, being the real children of Nanti were entitled to inherit the property. The defendants No.1 and 2 being children of Dungar Ram and his second wife Darkan would have no share in the suit property as per law. Thus, the mutation ordering devolution of suit property upon children of Nanti as well children of Dungar Ram and his second wife as owners is void ab initio to the extent it orders devolution of the suit property on the children of Dungar Ram and his second wife.

7. As regards argument of the appellants regarding limitation, it is established legal position that there is no limitation if the suit property is based on inheritance as in the instant case. Moreover, mutation No. 441 Ex.D5 being non-est in the eyes of law and having been sanctioned illegally by the revenue authorities thereby giving rights to persons who were not entitled as per law, could not be sustained. In this regard, I am in complete agreement with the observations and reasoning as recorded by the learned lower appellate Court in para 19 of its judgment and decree dated 01.11.2013 which is reproduced herein below: -

“Moreover mutation Ex. D5 was nonest in the eyes of law being not sanctioned legally by the revenue authorities giving rights thereby to those persons i.e. defendants who are not absolutely entitled as per Hindu Succession Act in the property of a female i.e. Nanti who was absolute owner of it and reason being so, her property was liable to be devolved only upon her real children i.e. plaintiff and proforma defendants. Therefore, the point of limitation would not put any hurdle in the claim of the plaintiff with



regard to challenge of a document which is nonest in the eye of law and void ab-initio. Hence, in the opinion of this court, Trial Court has rightly decided issued No. 4 in favour of plaintiff and against the defendants which is related to the fact as to whether suit of the plaintiff is time-barred. Keeping in view of the findings of the Trial Court on material issues, the suit of the plaintiff seems to be fully maintainable in its present form. Hence, in the opinion of this court, the submissions raised by counsel for the appellants do not hold water.”

8. Given the undisputed ownership of the plaintiff and proforma defendants No.3 and 4 over the suit property on the basis of inheritance, it is clear that mutation was wrongly sanctioned and was therefore non-est in the eyes of law. It is established position in law that there is no limitation for filing the suit regarding claim of inheritance. The appellants *per se* having no right in the suit property cannot claim so on the basis of wrongly entered mutation.

9. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.

10. Pending applications, if any, stand disposed of.

21.04.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No